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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

SUNSET COMMERCIAL LLC, a Nevada  
Limited Liability Company,

Plaintiff,

vs.

STAUFFER MANAGEMENT COMPANY, a  
Delaware Limited Liability Company;  
MONTROSE CHEMICAL CORPORATION  
OF CALIFORNIA, a Delaware Corporation;  
ATLANTIC RICHFIELD COMPANY, a  
Delaware Corporation; OLIN  
CORPORATION, a Virginia Corporation,  
TITANIUM METALS CORPORATION, a  
Delaware Corporation; NL INDUSTRIES,  
INC., a New Jersey Corporation; LE  
PETOMANE XXVII, INC., an Illinois  
Corporation, in its representative capacity as  
the NEVADA ENVIRONMENTAL  
RESPONSE TRUST TRUSTEE; and the  
UNITED STATES OF AMERICA.

Defendants.

Case No.

**COMPLAINT**

JURY TRIAL DEMAND

Plaintiff, SUNSET COMMERCIAL LLC (“Sunset”), for its cause of action against  
Defendants, and each of them individually, states and alleges as follows:

**JURISDICTION AND VENUE**

1. This Court has original subject matter jurisdiction over this case pursuant to the  
Comprehensive Environmental Response, Compensation, and Liability Act (“CERCLA”) Sections

1 107(a) and 113(g)(2) (creating exclusive original jurisdiction over CERCLA matters),<sup>1</sup> 22 U.S.C.  
 2 § 1331 (setting forth federal question jurisdiction), and the Declaratory Judgment Act 28 U.S.C.  
 3 § 2201.

4 2. This Court has jurisdiction over the Nevada state law claims asserted herein pursuant  
 5 to 28 U.S.C. § 1367.

6 3. Venue is proper in the Southern District of Nevada pursuant to 28 U.S.C. § 1391(b)  
 7 because the events giving rise to the claims occurred in Clark County, Nevada, and the City of  
 8 Henderson, Nevada. Venue is also proper in this judicial district pursuant to 42 U.S.C. § 9613(b)  
 9 because the release of hazardous substances and resulting damages occurred in Clark County,  
 10 Nevada, and the City of Henderson, Nevada.

11 4. The United States has waived sovereign immunity pursuant to 42 U.S.C.  
 12 § 9620(a)(1) with respect to claims against the United States.

### 13 NATURE OF ACTION

14 5. Sunset owns a 32.63-acre parcel located at 347 West Sunset Road, Henderson,  
 15 Nevada (the “Sunset Site”).

16 6. The Sunset Site is adjacent to an industrial area known as the Black Mountain  
 17 Industrial Complex (“BMI Complex”). A figure detailing the location of the Sunset Site and the  
 18 BMI Complex is attached hereto as Attachment 1.

19 7. The BMI Complex has been used for industrial purposes since the World War II  
 20 (“WWII”) era.

21 8. Various historical industrial operations of the above-named Defendants within the  
 22 BMI Complex discharged hazardous substances that were transported through ditches for handling  
 23 and disposal. A figure depicting the various ditches of the BMI Complex is attached hereto as  
 24 Attachment 2.

25 9. Two of these ditches, known as the Western Ditch and Northwest Ditch, originated  
 26 from industrial operations on southern portions of the BMI Complex and conveyed industrial  
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 <sup>1</sup> Codified at 42 U.S.C. §§ 9607(a) and 9613(b).

1 discharges of hazardous substances in a northerly direction downgradient across the Sunset Site on  
2 the way to an area of the BMI Complex known as the Lower Ponds for management and disposal.  
3 A conceptual diagram illustrating the roles the Western and Northwest Ditch played in conveying  
4 discharges of hazardous substances from industrial operations to the disposal locations is attached  
5 hereto as Attachment 3.

6 10. Discharges of hazardous substances into the Western Ditch and the Northwest Ditch  
7 by each of the above-named Defendants, as set forth in more detail herein, have resulted in the  
8 contamination of the Sunset Site.

9 11. Many of the impacts from historical disposal of hazardous substances related to the  
10 BMI Complex, including those portions of the Western Ditch and the Northwestern Ditch within  
11 the BMI Complex, have been, or are in the process of being, addressed under the oversight of the  
12 Nevada Department of Environmental Protection (“NDEP”).

13 12. Although portions of the Western Ditch and Northwestern Ditch on the BMI  
14 Complex both upgradient and downgradient of the Sunset Site have been, or are in the process of  
15 being, addressed under NDEP oversight, the Sunset Site was never investigated or addressed by  
16 any of the above-named Defendants.

17 13. Plaintiff Sunset is cleaning up the Sunset Site under NDEP oversight to address  
18 hazardous substances related to discharges to the Western Ditch and Northwestern Ditch by the  
19 above-named Defendants.

20 14. Each of the named Defendants have been held liable and/or admitted liability for  
21 costs associated with cleanup at the BMI Complex or agreed to investigate and cleanup the portions  
22 of the BMI Complex, which includes both the upper and lower portions of the Western Ditch and  
23 Northwestern Ditch on either side of the Sunset Site leaving a gap in characterization and cleanup  
24 of the Western Ditch and Northwestern Ditch.

25 15. This action closes that gap by addressing contamination on the Sunset Site that  
26 heretofore has not been part of the Defendants’ cleanup efforts.

27 16. Plaintiff Sunset brings this action against the Defendants for response cost recovery  
28 and declaratory judgment under the federal Comprehensive Environmental Response,

1 Compensation, and Liability Act (“CERCLA”).

2 17. In addition to Sunset’s CERCLA claims, it brings claims for the creation of an  
3 unlawful nuisance, trespass, strict liability, negligence.

4 18. As a result of the Defendants’ acts or omissions, Sunset has incurred damages,  
5 including diminished property value and costs associated with ongoing and future response actions  
6 at the Site.

7 **PARTIES**

8 19. Plaintiff Sunset is a limited liability company organized and existing under the laws  
9 of the State of Nevada with its principal place of business located in Las Vegas, Nevada. It is in  
10 the business of developing property for commercial and industrial use. In furtherance of its  
11 business, in 2013 Sunset purchased the “Sunset Site.”

12 20. Defendant ATLANTIC RICHFIELD COMPANY (“Atlantic Richfield”) is a  
13 Delaware Corporation with its principle place of business in Houston, Texas.

14 21. Atlantic Richfield is the successor-in-interest to the Anaconda Mining Company  
15 (“Anaconda”) and/or Anaconda’s liabilities with respect to the above-captioned action.

16 22. Anaconda was an operator of the BMI Complex during a period when it operated  
17 disposal sites and disposed of hazardous substances that, on information and belief and as alleged  
18 in more detail herein, resulted in contamination at the downgradient Sunset Site.

19 23. On information and belief, in or about May 1955, the Anaconda Copper Mining  
20 Company changed its name to The Anaconda Company.

21 24. On information and belief, on or about January 12, 1977, The Anaconda Company  
22 merged with and/or became a wholly-owned subsidiary of Atlantic Richfield.

23 25. By virtue of the merger and subsequent corporate transactions, Atlantic Richfield  
24 has succeeded to Anaconda and/or its liabilities with respect to the above-captioned action.

25 26. Defendant STAUFFER MANAGEMENT COMPANY, LLC (“Stauffer”) is a  
26 Delaware Limited Liability Company with its principal place of business located in Wilmington,  
27 Delaware. Stauffer is the successor-in-interest to Stauffer Chemical Company.

28 27. Stauffer was an owner and an operator of a portion of the BMI Complex during a

1 period when it operated disposal sites and disposed of hazardous substances that, on information  
2 and belief and as alleged in more detail herein, resulted in contamination at the downgradient Sunset  
3 Site.

4 28. Defendant MONTROSE CHEMICAL CORPORATION OF CALIFORNIA  
5 (“Montrose”) is a Delaware Corporation with its principal place of business located in Los Angeles,  
6 California.

7 29. Montrose was a lessee and an operator of a portion of the BMI Complex during a  
8 period when it operated disposal sites and disposed of hazardous substances that, on information  
9 and belief and as alleged in more detail herein, resulted in contamination at the downgradient Sunset  
10 Site.

11 30. Defendant OLIN CORPORATION (“Olin”) is a Virginia Corporation with its  
12 principal place of business located in Clayton, Missouri.

13 31. Olin is the successor-in-interest to Pioneer Chlor Alkali, Inc. (“Pioneer”) and/or  
14 Pioneer’s liabilities with respect to the above-captioned action.

15 32. Pioneer was an owner and an operator of a portion of the BMI Complex during a  
16 period when it operated disposal sites and disposed of hazardous substances that, on information  
17 and belief and as alleged in more detail herein, resulted in contamination at the downgradient Sunset  
18 Site.

19 33. Defendant LE PETOMANE XXVII, INC., is an Illinois corporation serving as the  
20 NEVADA ENVIRONMENTAL RESPONSE TRUST (“NERT”) Trustee.

21 34. NERT is the successor-in-interest to Tronox and/or Tronox’s liabilities with respect  
22 to the above-captioned action.

23 35. Defendant Titanium Metals Corporation (“Timet”) is a Delaware Corporation with  
24 its principle place of business in Warrensville Heights, Ohio.

25 36. Timet was an owner and an operator of a portion of the BMI Complex during a  
26 period when it operated disposal sites and disposed of hazardous substances that, on information  
27 and belief and as alleged in more detail herein, resulted in contamination at the downgradient Sunset  
28 Site.



1 industrial expansion leading up to and during World War II (“WWII”). Magnesium was a critical  
2 component in aircraft production and, by 1940, worldwide demand was exceeding supply. To  
3 ensure that magnesium was available for defense purposes, the United States military embarked on  
4 an effort to organize and fund the construction of a magnesium plant. As part of this effort, in 1941  
5 the United States military entered into discussions with Howard Ellis, a WWII era industrialist and  
6 President of Basic Refractories, Inc (“BRI”). These negotiations ultimately led to the formation of  
7 Basic Magnesium, Inc. (“Basic Magnesium”), the entity that was charged with overseeing the  
8 construction and operation of the magnesium plant.

9 46. On or about September 3, 1941, Basic Magnesium and the Defense Plant  
10 Corporation (“DPC”)—the military agency overseeing Basic’s work on the magnesium plant—  
11 entered into a construction contract with McNeil Construction Company for the construction of the  
12 Basic Magnesium Plant. The United States, via the DPC and other government agencies, dictated  
13 the cost and provided the funds necessary to build the Basic Magnesium Plant.

14 47. DPC designated a government officer to approve and dictate the plans, designs,  
15 specifications and schedules for the construction and equipment of the magnesium plant; approve  
16 the acquisition and installation of buildings, machinery and equipment for the plant; the costs of  
17 such buildings, machinery and equipment; any alterations to such plans, designs, specifications,  
18 schedules, and purchases of buildings, machinery and equipment; and bills of vendors of the  
19 buildings, equipment and machinery.

20 48. Ground breaking and construction of the BMI Complex began on or about  
21 September 15, 1941, on undeveloped desert land owned by the United States, which later came to  
22 be known as the BMI Complex.

23 49. On or about August 15, 1942, the Basic Magnesium Plant went into production,  
24 meeting its full production capacity in July 1943. Basic Refractories Inc. was a majority  
25 shareholder of Basic Magnesium Inc. Basic Magnesium Inc. was the initial operator of the Basic  
26 Magnesium Plant, doing so pursuant to an agreement with the United States government, including  
27 the DPC.

28 50. On information and belief, the DPC owned the work in process at the Basic

1 Magnesium Plant, the finished goods and the by-products and process wastes. The United States  
2 set the plant's production rate and held first priority to take and use the plant's output. On  
3 information and belief, the United States used the vast majority, if not all, of the magnesium  
4 produced by the Basic Magnesium Plant.

5 51. By early 1942 DPC had become dissatisfied with Basic Magnesium's progress. The  
6 DCP approached the Anaconda about taking over operations at the plant. At the DCP's request,  
7 Anaconda thereafter entered into negotiations with Basic Magnesium and, pursuant to a September  
8 30, 1942 agreement, took a controlling interest in Basic Magnesium.

9 52. In or about April 1944, the United States ordered a reduction in the level of  
10 production at the Plant. On or about September 6, 1944, the United States ordered cessation of  
11 magnesium production at the Basic Magnesium Plant, and actual production of magnesium ceased  
12 on or about November 15, 1944. However, the chlorine plant and caustic soda plant remained in  
13 production until May 1945 at the United States' request.

14 53. In total, Basic Magnesium operated the plant from August 31, 1942 to November  
15 15, 1944. The plant produced 166,322,685 pounds of marketable refined or alloyed magnesium  
16 ingots, billets, or slabs.

17 54. In November 1944, the Reconstruction Finance Corporation ("RFC"), another  
18 federal government agency, assumed control of the Plant, including the real property, equipment  
19 and machinery, and work in process and inventory. In May 1945, the RFC replaced Anaconda with  
20 J.M. Montgomery & Co., Inc., who, as an agent for RFC, managed the property.

21 55. In or about May 1945, the United States Navy entered into a contract with a private  
22 contractor to produce ammonium perchlorate in Electrolysis Unit 4 of the plant. Pursuant to the  
23 contract, the government contractor began operating at the site on or about June 15, 1945.

24 56. On or about May 1, 1945, Stauffer leased a portion of the property within the BMI  
25 Complex from the DPC, and later the RFC, and began manufacturing chlorine and caustic soda at  
26 the old magnesium plant, *i.e.*, the BMI Complex.

27 57. In or about June 1945, the United States subleased property to a government  
28 contractor who had entered into a contract with the U.S. Navy at about the same time to produce

1 perchlorates at the BMI Complex. The contractor first produced perchlorates from about June 15,  
2 1945 to August 16, 1945.

3 58. On or around June 30, 1945, the United States Congress transferred all of DPC's  
4 responsibilities for the BMI Complex to the RFC.

5 59. In or about February 1946, the government contractor, who had produced  
6 perchlorates pursuant to its agreement with the U.S. Navy in 1945, negotiated a lease with the RFC  
7 and re-started its production of perchlorates.

8 60. In October 1946, RFC transferred custody of the BMI Complex to the War Assets  
9 Administration (hereinafter "WAA"), also a United States government agency. WAA was given  
10 the task of disposing of surplus property, including real estate and equipment inventory at the BMI  
11 Complex.

12 61. Between approximately October 1947 and March 1948, the WAA and RFC  
13 proposed to and negotiated with the State of Nevada, acting by and through the Colorado River  
14 Commission of Nevada (hereinafter "CRC" or "State"), regarding purchase of the BMI Complex  
15 property.

16 **II. Expansion and Development of the BMI Complex: Post WWII**

17 62. On or about April 1, 1948, CRC took possession of the BMI Complex. On or about  
18 June 3, 1949, the United States, acting through the War Assets Administration and Reconstruction  
19 Finance Corporation, transferred the property to the State via quitclaim deed. CRC was assigned  
20 the United States' lease with Stauffer.

21 63. The State owned the BMI Complex property and leased it to various industrial  
22 manufacturing entities from approximately July 1949 until the State sold the property in June 1952.

23 64. Lessors of the property during the United States' and State of Nevada's ownership  
24 included Stauffer.

25 65. In or about March 1952, Stauffer purchased a portion of the BMI Complex property  
26 from the State and began manufacturing pesticides and organic chemical products. Stauffer  
27 continued operating at the BMI Complex until transferring ownership of its interests in the BMI  
28 Complex to Pioneer Chlor Alkali, Inc. ("Pioneer"), in 1988.

1           66. Pioneer continued operations as the BMI Complex until it was acquired by Olin  
2 Corporation in 2007.

3           67. In 1952, Stauffer subleased property to a government contractor that produced  
4 perchlorates for the United States military and its contractors. Ammonium perchlorate production  
5 continued after 1953 in a plant owned by the Navy and built on land purchased by the Navy.  
6 Ammonium perchlorate production, and production of sodium chlorate and sodium perchlorate as  
7 feedstocks, continued under the Navy's supervision until approximately 1962, when the United  
8 States sold its plant and equipment to the government contractor.

9           68. Beginning in June 1952, the five principal operating companies (and tenants) within  
10 the BMI Complex purchased from the State, via separate conveyances, the properties and facilities  
11 on those properties which they had been operating during their lease with the CRC.

12           69. At or about the same time in 1952, the CRC sold the remainder of the BMI Complex  
13 property to Basic Management, Inc. ("Basic Management"), which had been formed in December  
14 1951 by a group of the same five principal operating companies for the purpose of acquiring and  
15 managing certain common assets at the BMI Complex.

16           70. Basic Management was responsible for managing the properties, utilities, and  
17 facilities that were common to all users of the BMI Complex ("Common Areas").

18           71. In or about October and November 1953, the CRC and the U.S. Navy's government  
19 contractor, respectively, deeded certain parcels of the BMI Complex to the United States Navy.

20           72. During the period of 1953 to 1962, the government contractor, under direction of  
21 the U.S. Navy, facilitated the manufacture of perchlorates on the government-owned property. The  
22 U.S. property included the entire ammonium perchlorate plant and the underlying land, and  
23 equipment used to manufacture sodium chlorate and sodium perchlorate, including approximately  
24 400 electrolytic cells.

25           73. On information and belief, the production of the sodium perchlorate plant was  
26 dedicated to United States government purposes. On information and belief, at the ammonium  
27 perchlorate plant, Naval personnel worked on site supervising the contractor's production.

28           74. On information and belief, throughout the period during which the Navy owned the

1 perchlorate plants, the plant's process effluent was disposed of via the unlined ditches to ponds in  
2 the Common Areas. The process effluent contained, among other things, perchlorate compounds  
3 and chromium compounds.

4 75. On information and belief, on or about March 15, 1962, the U.S. Navy issued a  
5 quitclaim deed to the government contractor with respect to the ammonium perchlorate plant.

6 76. In 1947, Montrose subleased from Staffer approximately 10 acres of BMI property  
7 on which Montrose built an organic chemical manufacturing plant. Between 1947 and 1983,  
8 Montrose produced a variety of organic chemicals at its manufacturing plant.

9 77. TIMET was formed by a joint venture agreement between Allegheny Ludlum Steel  
10 Corporation and National Lead Company in 1950. National Lead initially leased facilities at the  
11 site from the CRC, which assigned the leases to the GSA after the CRC sold most of the Basic  
12 Magnesium property. TIMET ultimately obtained title to the leased property in the BMI Complex.

13 78. National Lead Company changed its name to NL Industries, Inc., on April 15, 1971.

14 79. Western Electro Chemical Company ("WECCO") was formed in 1941, and leased  
15 a portion of the BMI Complex, and by August 1952, WECCO had purchased several other portions  
16 of the BMI Complex for its various production lines.

17 80. American Potash and Chemical Company merged with WECCO in 1955. Kerr-  
18 McGee purchased American Potash and Chemical Company in 1967. In 2005, Kerr-McGee  
19 became Tronox LLC.

20 81. In 2009, Tronox LLC filed for bankruptcy. As a result, the Nevada Environmental  
21 Response Trust ("NERT") was established in February 2011 and became the owner of the property  
22 that was previously owned by Tronox while it performs its purpose to address this historical legacy  
23 contamination.

24 82. By 1976, the entities operating at the BMI Complex discontinued their practice of  
25 disposing waste in the unlined ditches and ponds to the Common Areas.

### 26 **III. Waste Management at the BMI Complex.**

27 83. The manufacturing of magnesium at the BMI Complex required two major raw  
28 materials, magnesite and chlorine. The magnesium plant had two major components corresponding

1 to each of these raw materials, a chlorine/caustic plant and a magnesium production plant.

2 84. During the magnesium production process, a mixture of calcined magnesite, coal,  
3 and peat was heated in electric furnaces (chlorinators) in an atmosphere of chlorine gas. Anhydrous  
4 magnesium chloride formed in the chlorinators was transferred to electrolytic cells where molten  
5 magnesium was separated from the chlorine. Magnesium was collected, refined, and cast into bars  
6 or other products.

7 85. Waste products generated during the magnesium production process included, but  
8 were not limited to, acid and caustic process liquors containing hydrochloric acid, residual salts  
9 comprised of sodium hydroxide and sodium chloride, asbestos sludge, dioxins, furans,  
10 hexachlorobenzene, arsenic, and solid residues such as refinery slag cakes.

11 86. After magnesium production ceased, tenants and contractors of the United States,  
12 and later tenants of the State of Nevada, engaged in a variety of manufacturing activities at the BMI  
13 Complex, including the production of chlorine, caustic soda, boron compounds, ammonium  
14 perchlorate, sodium perchlorate, pesticides, and other organic chemicals.

15 87. Throughout the tenure of the United States, Anaconda, and the State of Nevada, at  
16 least four principal areas within the Common Areas were used for waste disposal: the Trade  
17 Effluent Disposal Ponds, the Upper and Lower Ponds, the ditch drainage system leading to the  
18 Upper and Lower Ponds, and the BMI Landfill.

19 88. In the early 1940s, when the Basic Magnesium Plant was being constructed, the  
20 United States also built a ditch drainage system. The ditch draining system was designed to carry  
21 industrial effluents and storm runoff from the Basic Magnesium Plant site. Components of the  
22 ditch drainage system consisted of the Alpha Ditch, the Beta Ditch, the Western Ditch (sometimes  
23 known as the Stauffer Effluent Ditch), the Northwest Ditch, and the Western Trench System.

24 89. The ditch draining system, including the Western Ditch and Northwest Ditch, were  
25 open surface drainage channels. They channeled industrial waste into the Upper and Lower Ponds.  
26 The entire system, inclusive of the ditches and ponds, drained into the Las Vegas Wash.  
27 Attachment 2 is a diagram showing the historic drainage flows at from the BMI Complex, including  
28 the flow through the Western and Northwestern Ditches.

1           90.     The Western Ditch, historically also referred to as the Stauffer Effluent Ditch,  
2 conveyed wastewater and storm water from the chlorine and caustic soda production facilities of  
3 the Basic Magnesium Plant (later purchased by Stauffer and Pioneer, as set forth below). The  
4 Northwestern Ditch conveyed a combination of effluent from facilities other than the chlorine and  
5 caustic plants.

6           91.     The ditches were used first by the United States and Anaconda and/or their lessees  
7 when the Basic Magnesium Plant was built and operated. Thereafter industrial actors at the BMI  
8 Complex discharged waste into the ditch draining system, including but not limited to the Western  
9 and Northwest Ditches, until approximately 1976.

10 **IV.   Waste-Related Activities Involving Each Named Defendants.**

11 **A.   Atlantic Richfield and the United States.**

12           92.     As set forth above, Anaconda took a controlling interest in Basic in September 30,  
13 1942 and, through Basic, operated the Basic Magnesium Plant until its closure on November 15,  
14 1944.

15           93.     Anaconda, as the controlling member of Basic, generated and arranged for the  
16 disposal of hazardous substances at the BMI Complex.

17           94.     During the years it operated the Basic Magnesium Plant through Basic, Anaconda  
18 oversaw and arranged for the operation of a chlorine/caustic manufacturing plant to manufacture  
19 key ingredients needed to produce magnesium. The chlorine/caustic plant used a process known  
20 as the Hooker cell process to manufacture sodium hydroxide and chlorine by electrolysis of sodium  
21 chloride.

22           95.     The Hooker cell process generated a large volume of asbestos waste. Asbestos  
23 waste was generated through a high-pressure water stream used to remove the asbestos.

24           96.     In addition to asbestos, the Basic Magnesium Plant that was owned by the United  
25 States and operated by Atlantic Richfield discharged other hazardous substances such as arsenic,  
26 dioxins, furans, and hexachlorobenzene.

27           97.     These waste streams were conveyed via the BMI Complex ditch system, including  
28 the Western and Northwestern Ditch that flowed across the Sunset Site.

1           98.     In *Basic Management Inc. v. United States*, this Court held the United States is liable  
 2 under CERCLA § 107 (a)(3) as an arranger for disposal of hazardous substances at the BMI  
 3 Complex, including discharges into the Western and Northwestern Ditch that flowed across the  
 4 Sunset Site. *See Basic Management v. United States*, 569 F. Supp. 2d 1106, 1119 (D. Nev. 2008)  
 5 (holding the United States liable as an arranger). The United States also admitted in *Basic*  
 6 *Management v. United States* that it is liable under CERCLA § 107(a)(1) as an owner of the BMI  
 7 Complex. *See id.* at 118 (acknowledging the United State’s admission of owner liability during  
 8 WWII).

9           99.     In *Basic Management v. United States*, this Court held that Atlantic Richfield’s  
 10 predecessor, Anaconda, was liable under CERCLA 107(a)(1) and (a)(3) as an operator and an  
 11 arranger for disposal of hazardous substances at the BMI Complex, including discharges into the  
 12 Western and Northwestern Ditch that flowed across the Sunset Site. *See Basic Management v.*  
 13 *United States*, 569 F. Supp. 2d 1106, 1116 (D. Nev. 2008) (holding that Atlantic Richfield’s  
 14 predecessor, Anaconda, was liable as an operator); *see also id.* at 1117 (holding Anaconda liable  
 15 as an arranger). In that prior litigation, Atlantic Richfield did not dispute that it was responsible  
 16 for Anaconda’s contamination of the BMI Complex. *See id.* at 1114 (“Atlantic Richfield . . . does  
 17 not contest successor liability if Anaconda was an operator or arranger”).

18           **B.     Stauffer.**

19           100.    Stauffer was one of the first occupants of the BMI Complex after the cessation of  
 20 magnesium production. Stauffer leased the chlorine and caustic plant in 1945 and, starting in 1951,  
 21 made the first in a series of purchases of land and facilities at the BMI Complex. Stauffer ultimately  
 22 owned over 400 acres of property at the BMI Complex and, among other facilities, the chlorine and  
 23 caustic plant (“Stauffer Site”).

24           101.    From 1945 to 1975 Stauffer manufactured a variety of chemicals at the Stauffer Site,  
 25 including (at various times) chlorine, caustic soda, lindane, Trithion, methlytrithion,  
 26 p-chlorobenzenethiophenol, and O, O-diethylphosphorodithioic acid (DTA).

27           102.    Stauffer’s manufacturing produced numerous waste streams that were conveyed to  
 28 the BMI Ponds via the BMI Complex’s drainage ditch system, including the Western and

Northwestern Ditch.

103. The following table summarizes discharges into the BMI Complex ditch system between 1945 and 1975.

Process Operation	Dates Operation Occurred (Years)	Volume of Waste (Tons)	TDS Concentration in Waste (Percent)	Volume of Waste (Tons)	Distribution of Wastes	
					Upper Ponds (Jan. 1971-Dec. 1975)	Lower Ponds (May 1945-Dec. 1970)
Thiophenol/p-chlorothiophenol	1/60-12/75					
Phosphoric acid waste		19,636	~100%	19,636	6,136	13,500
Aqueous process waste		1,206,400	3%	36,192	11,310	24,882
Caustic wastewater		No data			-	-
Trithion/Imidan	1/58-12/75				-	-
Aqueous waste	1/58-12/74	29,992	10%	2,999	706	2,293
Dithio acid salt	1/58-12/75	2,259,000 lbs produced from 12/77-6/78	27.35%	9,532	2,648	6,884
					-	-
Chlor-alkali	1/46-12/75				-	-
Brine sludge		96,857	25.10%	24,311	4,052	20,259
Hypochlorite waste		20,750	11.58%	2,401	400	2,001
Sulfate slurry		1,313,542	7%	91,948	15,325	76,623
Fume scrubber		45,661	0.10%	46	8	38
<b>Total</b>				<b>187,065</b>	<b>40,584</b>	<b>146,481</b>

104. In the early 1990s, Stauffer and Pioneer jointly commissioned a Phase I Environmental Conditions Assessment Report (“Stauffer/Pioneer ECA”) in accordance with a consent agreement reached with the Nevada Division of Environmental Protection. The Stauffer/Pioneer ECA, the final version of which was dated March 22, 1993, refers to the Western Ditch as the “Stauffer Effluent Ditch” and states that Stauffer conveyed waste to the Lower BMI Ponds through that ditch, among other ditches.

105. The March 22, 1993 Stauffer/Pioneer ECA also acknowledges that Stauffer disposed of asbestos into the BMI ponds via the Western Ditch and other ditches, describing asbestos as a “primary” waste material: “The primary waste materials conveyed to the ponds

1 included asbestos and industrial effluent.”

2 106. Stauffer’s chlor-alkali plant generated large volumes of asbestos waste. Until 1976,  
3 Stauffer reconditioned cells using a process known as the Hooker cell process. The Hooker cell  
4 process relied a high-pressure wash to remove asbestos material from the cathode. This asbestos  
5 material then drained out into the facility’s drainage system and ultimately into the Western Ditch.

6 107. Although estimates vary, Stauffer has acknowledged discharging large volumes of  
7 asbestos into the BMI Ponds. For example, in a September 24, 1957 Inter-Office Memorandum,  
8 Stauffer estimated that the combined Stauffer-Montrose effluent contained 1,000 pounds of  
9 asbestos per month. Stauffer has also reported disposing a total of 1045 tons (or more than 2 million  
10 pounds) of asbestos waste to the BMI Ponds through the BMI Complex ditch system between 1946  
11 and 1976.

12 108. Effective June 28, 1996, Stauffer executed an agreement with NDEP and other  
13 parties acknowledging Stauffer’s responsibility for investigation and cleanup of hazardous  
14 substances on former Stauffer property where manufacturing and disposal operations occurred.  
15 This area includes the upper reaches of the Western Ditch and Northwestern Ditch upgradient of  
16 the Sunset Site. Stauffer continues to perform investigation and cleanup work under this agreement.

17 109. Effective February 15, 2006, Stauffer executed an agreement with NDEP and other  
18 parties acknowledging Stauffer’s liability under CERCLA for cleanup of that portion of the BMI  
19 Complex known as the “Common Areas.” The Common Areas includes the lower reaches of the  
20 Western Ditch and the Northwestern Ditch downgradient of the Sunset Site.

21 110. Effective December 12, 2016, NDEP issued an order to Stauffer requiring  
22 characterization of hazardous substances related to the Western Ditch and the Beta Ditch, which  
23 connected to the Northwestern Ditch, on former Stauffer property upgradient of the Sunset Site.

24 **C. Montrose.**

25 111. In 1947, Montrose subleased from Staffer approximately 10 acres of BMI property  
26 on which Montrose built an organic chemical manufacturing plant. Between 1947 and 1983,  
27 Montrose produced a variety of organic chemicals at its manufacturing plant, including  
28 monochlorobenzene, polychlorinated benzenes, chloral and dichlorobenzil. In 1954, Montrose

1 built a synthetic hydrochloric acid plant on the same property it leased from Stauffer; thereafter it  
2 produced industrial grade hydrochloric acid both as a byproduct and at its synthetic hydrochloric  
3 acid plant.

4 112. Prior to beginning construction of a waste water pond evaporation system in 1973,  
5 Montrose disposed of its waste into Stauffer's waste drainage system. Montrose's wastes were  
6 commingled with the wastes from Stauffer's operations and conveyed into the Basic Magnesium  
7 Plant's ditch system, including the Western and Northwestern Ditches.

8 113. The combined Montrose and Stauffer waste effluents were initially channeled to the  
9 Lower Ponds. Beginning in approximately 1970 and 1971, the combined effluents were diverted  
10 from the Lower Points to the Upper Ponds through the Beta Ditch Extension.

11 114. In addition to channeling its process waste into Basic Management Plant's ditch  
12 system (via Stauffer), Montrose also relied on the ditch system for disposal of spills and storm  
13 water runoff. As with its process waste, spills and storm water runoff travelled first into the Stauffer  
14 sewer system and then into the Basic Management Plant ditch system, including the Western and  
15 Northwestern Ditches.

16 115. Montrose's waste stream included pesticide residues, hydrochloric acid used to  
17 wash monochlorobenzene, sulfonated organics and sulfuric acid used to wash polychlorinated  
18 benzenes.

19 116. Effective June 28, 1996, Montrose executed an agreement with NDEP and other  
20 parties acknowledging Montrose's responsibility for investigation and cleanup of hazardous  
21 substances on former Montrose property where manufacturing and disposal operations occurred.  
22 This includes areas and operations that discharged to the Western Ditch and Northwestern Ditch  
23 upgradient of the Sunset Site. Montrose continues to perform investigation and cleanup work under  
24 this agreement.

25 117. Effective February 15, 2006, Montrose executed an agreement with NDEP and other  
26 parties acknowledging Montrose's liability under CERCLA for cleanup of that portion of the BMI  
27 Complex known as the "Common Areas." The Common Areas includes the lower reaches of the  
28 Western Ditch and the Northwestern Ditch downgradient of the Sunset Site.

1 118. Effective December 12, 2016, NDEP issued an order to Montrose requiring  
2 characterization of hazardous substances related to the Western Ditch and the Beta Ditch, which  
3 connected to the Northwestern Ditch, upgradient of the Sunset Site.

4 **D. Olin.**

5 119. Pioneer purchased the Stauffer Site from Stauffer in 1988.

6 120. Pioneer continued to operate the chlor-alkali plant on the Stauffer Site.

7 121. Hazardous substances continued to migrate from Olin/Pioneer's property into the  
8 ditch system and reach the Sunset Site.

9 122. Effective February 15, 2006, Pioneer executed an agreement with NDEP and other  
10 parties acknowledging Pioneer liability under CERCLA for cleanup of that portion of the BMI  
11 Complex known as the "Common Areas." The Common Areas includes the lower reaches of the  
12 Western Ditch and the Northwestern Ditch downgradient of the Sunset Site.

13 123. In 2007, Pioneer merged with Olin.

14 124. Effective June 28, 1996, Pioneer executed an agreement with NDEP and other  
15 parties acknowledging Pioneer's liability for investigation and cleanup of hazardous substances on  
16 former Pioneer property where manufacturing and disposal operations occurred. This area includes  
17 the upper reaches of the Western Ditch and Northwestern Ditch upgradient of the Sunset Site. Olin  
18 continues to perform investigation and cleanup work under this agreement.

19 125. Effective December 12, 2016, NDEP issued an order to Olin requiring  
20 characterization of hazardous substances related to the Western Ditch and the Beta Ditch, which  
21 connected to the Northwestern Ditch, on Olin property upgradient of the Sunset Site.

22 **E. NERT.**

23 126. WECCO was formed in 1941. American Potash and Chemical Company merged  
24 with WECCO in 1955. Kerr-McGee purchased American Potash and Chemical Company in 1967.  
25 In 2005, Kerr-McGee became Tronox LLC.

26 127. Chlorate (including sodium chlorate filter cake), perchlorate, and boron process  
27 wastes and related waste streams from cooling tower blowdown, boiler blowdown, and  
28 housekeeping washings were disposed of through the Western and/or Northwestern Ditch by Kerr-

1 McGee, predecessors, and tenants between 1945 and 1976.

2 128. Effective August 1, 1996, executed an agreement with NDEP acknowledging  
3 Tronox's liability for investigation and cleanup of hazardous substances on Tronox property where  
4 manufacturing and disposal operations occurred. This area includes the upper reaches of the  
5 Northwestern Ditch and other ditches that connected to the Northwestern Ditch upgradient of the  
6 Sunset Site. NERT continues to perform investigation and cleanup work under this agreement.

7 129. Effective February 15, 2006, Tronox executed an agreement with NDEP and other  
8 parties acknowledging Tronox liability under CERCLA for cleanup of that portion of the BMI  
9 Complex known as the "Common Areas." The Common Areas includes the lower reaches of the  
10 Western Ditch and the Northwestern Ditch downgradient of the Sunset Site.

11 130. At the time of its bankruptcy Tronox had not completed its obligations to  
12 characterize hazardous substances on and migrating from Tronox property where manufacturing  
13 and disposal operations occurred, making it impossible to identify for potential bankruptcy  
14 claimants to identify potential claims against Tronox related to the Sunset Site or other properties  
15 impacted by discharges of hazardous substances to the Western Ditch and/or Northwestern Ditch.

16 131. NERT is the successor-in-interest to Tronox and/or Tronox's liabilities with respect  
17 to the BMI Complex and hazardous substances that have migrated from the BMI Complex.

18 **F. Timet and NL Industries.**

19 132. Timet was formed from a joint venture agreement between Allegheny Ludlum Steel  
20 Corporation and National Lead Company (now NL Industries) in 1950.

21 133. Wastes included leach liquor, caustic waste, and other process wastes. All  
22 discharges from the Timet plant were commingled with other BMI facilities waste effluents and  
23 conveyed in the Western Ditch and/or Northwestern Ditch to the BMI ponds.

24 134. National Lead was the original lessee for Timet's facilities and operations.

25 135. Effective June 28, 1996, Timet executed an agreement with NDEP acknowledging  
26 Timet's responsibility for investigation and cleanup of hazardous substances on Timet property  
27 where manufacturing and disposal operations occurred. This includes areas and operations that  
28 discharged to the Western Ditch and Northwestern Ditch upgradient of the Sunset Site. Timet

1 continues to perform investigation and cleanup work under this agreement.

2 136. Effective February 15, 2006, Timet executed an agreement with NDEP and other  
3 parties acknowledging Timet's liability under CERCLA for cleanup of that portion of the BMI  
4 Complex known as the "Common Areas." The Common Areas includes the lower reaches of the  
5 Western Ditch and the Northwestern Ditch downgradient of the Sunset Site.

6 137. Effective December 14, 2012, NDEP issued an order to Timet requiring excavation  
7 and removal of hazardous substances related to the Northwestern Ditch and the Beta Ditch, which  
8 connected to the Northwestern Ditch, upgradient of the Sunset Site.

9 **V. The Defendants' Investigation and Cleanup Work of Area Near and Adjacent to the**  
10 **Sunset Site.**

11 138. Defendants and/or their successors-in-interest have entered into agreements with  
12 NDEP, pursuant to which they have agreed to engage in cleanup and investigation work in the areas  
13 surrounding the Sunset Site.

14 139. The cleanup work of impacted soils has primarily involved excavation of soil  
15 containing hazardous substances above designated action levels and disposal of the impacted soil  
16 in repositories and/or landfills. The Sunset Site is undergoing the same type of cleanup utilizing  
17 the same standards and requirements applied response actions on the BMI Complex.

18 140. This cleanup work is based on site assessment and investigation overseen by NDEP  
19 that occurred in the late 1990s and early 2000s. On November 2, 2001, NDEP issued a Record of  
20 Decision ("ROD") describing the process undertaken for selecting this cleanup work.

21 141. Before issuing the ROD, NDEP and several of the Defendants named in this action  
22 or their successors to steps to solicit public participation and input. Specifically, the parties to the  
23 ROD held a series of public meetings beginning on March 9, 2000 and ending on December 1,  
24 1998. *See* ROD at 9. In addition to these public meetings, a Restoration Advisory Committee  
25 ("RAC") was formed and held meetings from October, 1999 through April 2001. The RAC which  
26 was comprised of twenty community leaders, provided an alternative means for soliciting  
27 community opinion regarding proposed cleanup alternatives.

28 142. The public input obtained for addressing the BMI Common Areas by excavating

1 and landfilling impacted soil – soil impacted by the same hazardous substances from the same  
 2 sources as the soil on the Sunset Site – is equally applicable for excavation of soil from the Sunset  
 3 Site according to the same requirements and methods used on the BMI Common Areas. These  
 4 cleanup measures are all part of the same response action for purposes of National Contingency  
 5 Plan (“NCP”) compliance. The Sunset Site response action has been conducted consistent with the  
 6 NCP.

7 **VI. Historic Activities at the Sunset Site.**

8 143. The Sunset Site has never been used for manufacturing or storage of hazardous  
 9 chemicals. The only industrial operations at the site have consisted of sand and gravel excavation.  
 10 According to aerial photographs, this sand and gravel mining began in the late 1950s. Prior to that  
 11 time, there is no record of the Site being used for any industrial purpose other than the Western  
 12 Ditch and Northwestern Ditch transiting the Sunset Site.

13 144. Aerial photographs show that gravel excavation at the Site peaked in the late 1970s.  
 14 Site operations continued in the 1980s but transitioned to backfilling. By the 1990s the Sunset Site  
 15 was rough graded to its present-day elevation and contours.

16 145. Aerial photographs show the Western and Northwestern Ditches in place and as  
 17 identifiable features leading into the Sunset Site.

18 **VII. Sunset’s Purchase of the Sunset Site and Cleanup of Asbestos and Other**  
 19 **Contamination.**

20 146. Sunset acquired the Sunset Site in 2013.

21 147. At the request of NDEP, Sunset hired an environmental consulting firm, Broadbent  
 22 and Associates to develop a work plan to collect and analyze soil samples. Sampling and other site  
 23 assessment work occurred in September and October, 2017.

24 148. In May 2018, Sunset received a Site Characterization Report that identified asbestos  
 25 in the vicinity of the Western Ditch.

26 149. Sunset cleaned up asbestos and other hazardous substances associated with the  
 27 Western Ditch and Northwestern Ditch that originated on the BMI Complex, crossed the Sunset  
 28 Site, and reentered the BMI Complex where they terminated at the Lower Ponds.

1           150. Sunset conducted the cleanup under NDEP oversight in accordance with a  
2 Corrective Action Plan dated November 30, 2018.

3           151. Sunset conducted the cleanup consistent with the National Contingency Plan  
4 (“NCP”) and has incurred necessary response costs of \$6,039,623.30 as a result of the cleanup  
5 work.

6           152. Sunset’s cleanup of the Sunset Site delayed Sunset’s ability to develop and/or resell  
7 the property.

8           153. The presence of asbestos and other hazardous substances associated with the  
9 Western Ditch and Northwestern Ditch that required the cleanup work Sunset adversely affected  
10 the market value of the property.

## 11                           **PLAINTIFFS’ CLAIMS FOR RELIEF**

### 12                           **FIRST CLAIM FOR RELIEF**

#### 13                           **Recovery of costs pursuant to, 42 U.S.C. §§ 9607(a)(1),** 14                           **9607(a)(4)(B) (CERCLA §§ 107(a)(1), 107(a)(4)(B)), as against each of the Defendants** 15                           **as a facility owner and/or operator**

16           154. Sunset realleges and incorporates by reference all of the allegations contained in the  
17 preceding paragraphs as if set forth in full herein.

18           155. CERCLA section 107(a)(1), 42 U.S.C. § 9607(a)(1), provides in relevant part that:

19                           [A]ny person who at the time of disposal of any hazardous substance  
20                           owned or operated any facility at which such hazardous substances  
21                           were disposed of, . . . shall be liable for—. . . any other necessary  
22                           costs of response incurred by any other person consistent with the  
23                           national contingency plan. . . .

24           42 U.S.C. §§ 9607(a)(2), 9607(a)(4)(b).

25           156. CERCLA section 101(29) defines the term “disposal” by reference to Section 1004  
26 of the Solid Waste Disposal Act (“SWDA”), 42 U.S.C. § 6903. 42 U.S.C. § 9601(29). The SWDA  
27 defines “disposal” as:

28                           the discharge, deposit, injection, dumping, spilling, leaking, or  
29                           placing of any solid waste or hazardous waste into or on any land or  
30                           water so that such solid waste or hazardous waste or any constituent  
31                           thereof may enter the environment or be emitted into the air or  
32                           discharged into any waters, including ground waters.

33           42 U.S.C. § 6903(3).

157. CERCLA Section 101(14) defines “hazardous substance” as:

(A) any substance designated pursuant to section 311(b)(2)(A) of the Federal Water Pollution Control Act [33 U.S.C. § 1321(b)(2)(A)], (B) any element, compound, mixture, solution, or substance designated pursuant to section 9602 of this title, (C) any hazardous waste having the characteristics identified under or listed pursuant to section 3001 of the Solid Waste Disposal Act [42 U.S.C. § 6921] (but not including any waste the regulation of which under the Solid Waste Disposal Act [42 U.S.C. § 6901 et seq.] has been suspended by Act of Congress), (D) any toxic pollutant listed under section 307(a) of the Federal Water Pollution Control Act [33 U.S.C. § 1317(a)], (E) any hazardous air pollutant listed under section 112 of the Clean Air Act [42 U.S.C. § 7412], and (F) any imminently hazardous chemical substance or mixture with respect to which the Administrator has taken action pursuant to section 7 of the Toxic Substances Control Act [15 U.S.C. § 2606]. The term does not include petroleum, including crude oil or any fraction thereof which is not otherwise specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of this paragraph, and the term does not include natural gas, natural gas liquids, liquefied natural gas, or synthetic gas usable for fuel (or mixtures of natural gas and such synthetic gas).

42 U.S.C. § 9601(14).

158. CERCLA Section 101(20) defines “owner or operator” in relevant part as follows:

“in the case of an onshore facility or an offshore facility, any person owning or operating such facility.” 42 U.S.C. § 9601(20)(A)(ii).

159. CERCLA Section 101(18) defines “onshore facility” as: “any facility (including, but not limited to, motor vehicles and rolling stock) of any kind located in, on, or under, any land or nonnavigable waters within the United States.” 42 U.S.C. § 9601(18).

160. CERCLA Section 101(9) defines “facility” as:

(A) any building, structure, installation, equipment, pipe or pipeline (including any pipe into a sewer or publicly owned treatment works), well, pit, pond, lagoon, impoundment, ditch, landfill, storage container, motor vehicle, rolling stock, or aircraft, or (B) any site or area where a hazardous substance has been deposited, stored, disposed of, or placed, or otherwise come to be located; but does not include any consumer product in consumer use or any vessel.

42 U.S.C. § 9601(9).

161. Each Defendant either owned (including leasehold interests tantamount to ownership) or operated portions of the facility during a time when disposal of hazardous substances occurred.

1           162. CERCLA Section 101(21) defines “person” as: “an individual, firm, corporation,  
2 association, partnership, consortium, joint venture, commercial entity, United States Government,  
3 State, municipality, commission, political subdivision of a State, or any interstate body.” 42 U.S.C.  
4 § 9601(21).

5           163. CERCLA Section 101(22) defines “release” in relevant part as: “any spilling,  
6 leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching,  
7 dumping, or disposing into the environment (including the abandonment or discarding of barrels,  
8 containers, and other closed receptacles containing any hazardous substance or pollutant or  
9 contaminant). . . .” 42 U.S.C. § 9601(22).

10           164. CERCLA Section 101(8) defines “environment” in relevant part as: “any other  
11 surface water, ground water, drinking water supply, land surface or subsurface strata, or ambient  
12 air within the United States or under the jurisdiction of the United States.” 42 U.S.C. § 9601(8)(B).

13           165. Each Defendant named in this action is a “person” as defined in section 101(21) of  
14 CERCLA, 42 U.S.C. § 9601(21).

15           166. The BMI Complex and the Sunset Site, collectively and without regard to property  
16 or ownership boundaries, is a single “facility” as defined in CERCLA section 101(9), 42 U.S.C. §  
17 9601(9), because “hazardous substance has been deposited, stored, disposed of, or placed, or  
18 otherwise come to be located” throughout the BMI Complex and the Sunset Site. The single  
19 “facility” that is comprised of the BMI Complex and Sunset Site is hereinafter referred to as the  
20 “BMI/Sunset Facility.”

21           167. The Defendants or their agents or predecessors-in-interests, directly and indirectly,  
22 each owned or operated the BMI/Sunset Facility within the meaning of CERCLA section 107(a)(1),  
23 42 U.S.C. § 9607(a)(1). Each Defendant or their agents or predecessors-in-interests, directly and  
24 indirectly, owned the BMI/Sunset Facility or portions thereof or operated the BMI/Sunset Facility  
25 or portions thereof in a manner that resulted in hazardous substances being disposed of at the  
26 BMI/Sunset Facility.

27           168. The Defendants’ release and threatened release of those hazardous substances into  
28 the BMI/Sunset Facility have caused and will cause Sunset to incur necessary response costs within

1 the meaning of CERCLA Section 101(25), 42 U.S.C. § 9601(25).

2 169. Sunset has conducted the cleanup consistent with the National Contingency Plan  
3 (“NCP”) and has incurred necessary response costs as a result of the cleanup work.

4 170. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are jointly  
5 and severally liable for response costs incurred and future response costs to be incurred in  
6 connection with the BMI/Sunset Facility.

7 171. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are liable  
8 to Sunset for the response costs incurred and future response costs to be incurred by Sunset in  
9 connection with the portion of the BMI/Sunset Facility that is the Sunset Site, and Sunset is entitled  
10 to recover from each Defendant for its response costs incurred and future response costs to be  
11 incurred with regard to the Sunset Site.

#### 12 **SECOND CLAIM FOR RELIEF**

13 **Recovery of costs pursuant to, 42 U.S.C. §§ 9607(a)(3),**  
14 **9607(a)(4)(B) and 9613 (CERCLA §§ 107(a)(3), 107(a)(4)(B)) as against**  
**each of the Defendants as arrangers for the disposal of hazardous substances**

15 172. Sunset realleges and incorporates by reference all of the allegations contained in the  
16 preceding paragraphs as if set forth in full herein.

17 173. CERCLA section 107(a)(3) provides in relevant part:

18 [A]ny person who by contract, agreement, or otherwise arranged for  
19 disposal or treatment, or arranged with a transporter for transport for  
20 disposal or treatment, of hazardous substances owned or possessed  
21 by such person, by any other party or entity, at any facility or  
22 incineration vessel owned or operated by another party or entity and  
containing such hazardous substances . . . shall be liable for—. . . any  
other necessary costs of response incurred by any other person  
consistent with the national contingency plan. . . .

23 42 U.S.C. §§ 9607(a)(3), 9607(a)(4)(b).

24 174. The Defendants or their predecessors-in-interests, directly and indirectly, owned and  
25 possessed hazardous substances disposed of at the BMI/Sunset Facility.

26 175. Defendants are liable under Section 107(a)(3) of CERCLA, 42 U.S.C. § 9607(a)(3)  
27 as, or as successors-in-interest to, persons who by contract, agreement or otherwise, arranged for  
28 the disposal or treatment, or arranged with a transporter for transport for disposal or treatment of

1 hazardous substances owned or possessed by them or by another party or entity, at the BMI/Sunset  
2 Facility.

3 176. Each Defendant, its agent(s), and/or its predecessors-in-interest caused hazardous  
4 waste to be discharged, deposited, or released on or into the BMI/Sunset Facility. The conduct in  
5 which each Defendant or its agent(s) engaged constitutes an arrangement for disposal or treatment  
6 or constitutes an arrangement with a transporter for transport for disposal or treatment of hazardous  
7 substances.

8 177. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are jointly  
9 and severally liable for response costs incurred and future response costs to be incurred in  
10 connection with the BMI/Sunset Facility.

11 178. Pursuant to Section 107(a) of CERCLA, 42 U.S.C. § 9607(a), Defendants are liable  
12 to Sunset for the response costs incurred and future response costs to be incurred by Sunset in  
13 connection with the portion of the BMI/Sunset Facility that is the Sunset Site, and Sunset is entitled  
14 to recover from each Defendant for its response costs incurred and future response costs to be  
15 incurred with regard to the Sunset Site.

16 **THIRD CLAIM FOR RELIEF**  
17 **(Private Nuisance pursuant to Nev. Rev. Stat § 40.140—Private Defendants)**

18 179. Sunset realleges and incorporates by reference all of the allegations contained in the  
19 preceding paragraphs as if set forth in full herein.

20 180. Defendants Atlantic Richfield, Stauffer, Montrose, Olin, NERT, Timet, and NL  
21 Industries (“Private Defendants”) by their or their predecessors’-in-interest activities at the BMI  
22 Complex and/or their ownership or their predecessors’-in-interests ownership interests at the BMI  
23 Complex, intentionally and unreasonably caused the release of pollutants and the contamination of  
24 the Sunset Site.

25 181. The contaminants originated from the Private Defendants’ property and/or from  
26 facilities or manufacturing processes that were under the Private Defendants’ actual or effective  
27 control. As used in this paragraph, “Private Defendants’ property” includes property owned,  
28 leased, managed, or controlled by the Private Defendants or any individual Private Defendant or

1 by any individual Private Defendant's predecessor-in-interest. As used in this paragraph, "facilities  
2 or manufacturing processes that were under the Private Defendants actual or effective control"  
3 includes waste discharges directed, caused, or made on behalf of the Private Defendants or the  
4 Private Defendants' predecessors-in-interest.

5 182. The contaminants released onto the Sunset Site were injurious to health and have  
6 substantially and unreasonably interfered with the free use and comfortable enjoyment of the Sunset  
7 Site.

8 183. On information and belief, some or all of the Private Defendant or their  
9 predecessors-in-interest have ceased and/or do not currently engaging in conduct causes the release  
10 of pollutants and contamination on the Sunset Site. Despite this apparent cessation of offending  
11 activities by some or all of the Private Defendants, their contamination remains on the Sunset Site  
12 and is a continuing nuisance.

13 184. As a direct and proximate result of the release of contaminants, Sunset is unable to  
14 freely use the Sunset Site and has suffered and continues to suffer economic losses.

15 **FOURTH CLAIM FOR RELIEF**  
16 **(Trespass pursuant to Nevada common law—Private Defendants)**

17 185. Sunset realleges and incorporates by reference all of the allegations contained in the  
18 preceding paragraphs as if set forth in full herein.

19 186. Private Defendants or their predecessors-in-interest intentionally and/or negligently  
20 caused pollutants and contamination to enter and invade the Sunset Site.

21 187. Neither Private Defendants nor their predecessors-in-interest sought or obtained  
22 Sunset's consent or the consent of Sunset's predecessors-in-interest to cause contamination to enter  
23 and remain on the Sunset Site.

24 188. As a direct and proximate result of the Private Defendants' actions, damage has  
25 occurred to the Sunset Site and Sunset has suffered and continues to suffer economic losses.

26 ///

27 ///

28 ///

**FIFTH CLAIM FOR RELIEF**  
**(Strict liability for abnormally dangerous activities pursuant to Nevada common law—Private Defendants)**

189. Sunset realleges and incorporates by reference all of the allegations contained in the preceding paragraphs as if set forth in full herein.

190. Private Defendants or their predecessors-in-interest have engaged in activities near and on the Sunset Site that were abnormally, intrinsically, and inherently dangerous and represented a high degree of risk of harm and physical damage to person and real property. The Private Defendants conduct, described more fully in the preceding paragraphs, included but was not limited to manufacturing and industrial activities that involved hazardous waste byproducts released onto land and ditches.

191. This activity caused widespread contamination in and surrounding the BMI Complex. The Private Defendants or their predecessors-in-interest have acknowledged and attempted to account for some, but not all, of the harm caused by their conduct by entering into certain administrative agreements with NDEP. These agreements have required that the Private Defendants pay for cleanup of contamination resulting from their abnormally dangerous activities. These agreements, however, have not addressed contamination at the Sunset Site.

192. The risks posed by the Private Defendants' conduct (or the conduct of their predecessors-in-interest) could not be eliminated with the exercise of reasonable care. There is no safe way to release toxic waste and contaminated effluent into open air drainage ditches.

193. The Private Defendants' release of toxic and contaminated substances was neither a matter of common usage nor appropriate to the place where it was carried out.

194. The value of the Private Defendant's conduct is far outweighed by the serious environmental harms and property damage caused by them. On information and belief, the Private Defendants or their predecessors-in-interest were engaged in commercial enterprises and manufacturing product for a profit. Whatever the importance that may be assigned to their commercial and profitability interests, that importance is far outweighed by the need to care for the environment and cleanup of property.

195. As a direct and proximate result of the Private Defendants' abnormally, intrinsically,

1 and inherently dangerous activities, Sunset has suffered and continues to suffer economic losses.  
2 The Private Defendants are strictly liable for these losses.

3 **SIXTH CLAIM FOR RELIEF**  
4 **(Negligence pursuant to Nevada common law—as to Private Defendants)**

5 196. Sunset realleges and incorporates by reference all of the allegations contained in the  
6 preceding paragraphs as if set forth in full herein.

7 197. The Private Defendants or their predecessors-in-interest owed a duty of care to  
8 Sunset and prior owners of the Sunset Site to responsibly own, operate, respond to spills and  
9 releases, and take all measures reasonably necessary to protect the public, including Sunset, from  
10 contamination of property.

11 198. The Private Defendants, including its officers, agents, employees and/or  
12 predecessors-in-interests knew, or in the exercise of reasonable care should have known, that their  
13 activities would result in the release of hazardous substances.

14 199. The Private Defendants, including their officers, agents, employees and/or  
15 predecessors-in-interests knew, or in the exercise of reasonable care should have known of the  
16 dangerous, offensive, hazardous, or toxic nature of their operations and activities near the Sunset  
17 Site.

18 200. The Private Defendants, including their officers, agents, employees and/or  
19 predecessors-in-interest knew, or in the exercise of reasonable care should have known of the  
20 dangerous, offensive, hazardous, or toxic nature of their releases near the Sunset site and that those  
21 releases were capable of contaminating the soil of downgradient property owners.

22 201. The Private Defendants, including their officers, agents, employees and/or  
23 predecessors-in-interest, failed to take reasonable precautions and measures to prevent or mitigate  
24 the releases and spills, as well as adequate planning for spills, overflows, and other emergencies.

25 202. The spills and releases caused by the Private Defendants' negligent conduct and the  
26 resulting harm to the Sunset Site were foreseeable consequences of the Private Defendants acts  
27 and/or omissions.

28 203. The Private Defendants' negligent actions or omissions are the direct and proximate

1 cause of damage to Sunset.

2 204. Sunset in no way contributed to the damages and injuries it has sustained.

3 205. The Private Defendants, by reason of their negligence, are liable for all of the  
4 damages and injuries to Sunset proximately caused by the spills and releases described herein.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Sunset prays for the following relief:

7 1. Judgment for fair and reasonable damages against all Defendants for response costs  
8 in accordance with CERCLA Sections 107(a);

9 2. A declaration on liability and response costs or damages in accordance with  
10 CERCLA Sections 107(a) and 113(g)(2);

11 3. Judgment for fair and reasonable damages against the Private Defendants pursuant  
12 to Sunset's Nevada law claims (private nuisance, trespass, strict liability for abnormally dangerous  
13 activities, and negligence); and

14 4. Any other relief deemed just and appropriate by this Court.

15 **DEMAND FOR JURY TRIAL**

16 Sunset hereby demands a trial by jury on all issues so triable.

17 DATED: December 14, 2023

PARSONS BEHLE & LATIMER

18  
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**INDEX OF EXHIBITS**

<b><u>Exhibit</u></b>	<b><u>Description</u></b>	<b><u>Pages</u></b>
1	Figure detailing the location of the Sunset Site and the BMI Complex	1
2	Figure depicting the various ditches of the BMI Complex	1
3	Conceptual diagram illustrating the roles the Western and Northwest Ditch played in conveying discharges of hazardous substances from industrial operations to the disposal locations	1